

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN LAMAR BARNES, : NO. 1:02-CV-00101
: :
Plaintiff, : ORDER
: v.
: :
MATTHEW THOMAS, et al., : :
: Defendants. : :

This matter is before the Court on the Magistrate Judge's November 25, 2003 Report and Recommendation (doc. 63), to which Plaintiff filed no objections.

Plaintiff is an inmate at the Southern Ohio Correctional Facility (SOCF). On January 30, 2002, Plaintiff filed a complaint alleging excessive force and deliberate indifference thereto (doc. 3). The remaining Defendants in the action are SOCF Sergeant Michael Thomas, SOCF Unit Manager Paul Dunn, and SOCF Captain Neff (doc. 5).

In her Report and Recommendation, the Magistrate Judge found that there are genuine issues of material fact as to Plaintiff's excessive use of force claim against Defendant Thomas, but that Plaintiff failed to establish a prima facie case of deliberate indifference against Defendant Dunn, and failed to allege facts or actions against Defendant Neff that would establish an Eighth Amendment violation (Id.). Consequently, the Magistrate

Judge recommended that the Court deny Defendants' Motion for Summary Judgment on Plaintiff's excessive use of force claim against Defendant Thomas, but grant Defendants summary judgment on Plaintiff's Eighth Amendment claims against Defendants Dunn and Neff (Id.). Finally, the Magistrate Judge recommended that the Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons, an appeal of such an order would not be taken in good faith (Id.).

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation thorough, well-reasoned, and correct. Accordingly, the Court AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 63), and ADOPTS the Magistrate Judge's recommended decision (Id.). The Court therefore DENIES Defendants' Motion for Summary Judgment in part as to Plaintiff's excessive use of force claim against Defendant Thomas (doc. 39), but GRANTS Defendants' Motion in part as to Plaintiff's Eighth Amendment claims against Defendants Dunn and Neff (Id.). The Court further certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons

an appeal of this Court's Order would not be taken in good faith.
McGore v. Wiggleworth, 114 F.3d 601 (6th Cir. 1997).

SO ORDERED.

Date: December 17, 2003 /s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge